

**By a loan for - במלוה שיש עליה משכון מקודשת מדרבי יוסי ברבי יהודה -
which there is collateral, she is betrothed according to ר"י בר"י.**

Overview

taught that if someone is מקדש a woman by forgiving her a loan, for which the creditor has a security from the woman, she is מקודשת based on the ruling of ר"י בר"י (who maintains לאו לקידושין ניתנו ¹). Our תוספות discusses the details of this ruling.

אין לפרש דמיירי במשכון שלא בשעת הלואה² דקני לה מדרבי יצחק³ -

One cannot explain that we are discussing a case of a משכון שלא בשעת הלואה, which the creditor acquires based on the teaching of ר"י -

דאס כן היה לו להביא כאן דרבי יצחק -

For if this is so (that we are discussing a case where he is משכון her with a משכון בע"ח קונה ר"י **should have cited here** the ruling of ר"י (שלא בשעת הלואה - משכון

כמו שמביא לעיל (דף ח"ב) גבי קידשה במשכון מקודשת⁴ -

Like ר"נ cited previously the ruling of ר"י, regarding the ברייתא which states if he was מקדש her with a משכון she is מקודשת -

ולעיל היה לו להביא דרבי יוסי ברבי יהודה⁵

¹ Just like by יעוד, where she owes him money (she is his debtor for the work she still owes him) and her body is the משכון which the master is holding as collateral, and by relinquishing her debt she is מקודשת, the same is in the case of מלוה על המשכון that she is מקודשת if he relinquishes the loan.

² There are two types of משכון, one is a משכון which the מלוה takes from the לוה at the time of the loan (this is referred to as a משכון בשעת הלוואה), and its purpose may be just to make sure that the לוה does not deny the loan (but it is not taken as payment); the other is a משכון which the מלוה takes after the loan is due and the לוה did not pay (this is called a משכון שלא בשעת הלוואה). The purpose of this משכון is a form of (insuring) payment. This latter type of משכון is what the תורה discusses in כד-יג (תצא). See “Appendix’ # 1.

3. משכון שלא בשעת הלוואה (regarding returning a פסוק of זדקה, see ר' יצחק 2) derives from the fact that the owner at night [see footnote # 2] that the משכון (שלא בשעת הלוואה) (acquires a certain ownership) in the [however the משכון is not מלוה a קונה]. According to the אין לפרש if he returns this (שלא בשעת הלוואה) to the woman she is מקודשת to him, for previously he 'owned' it and now she owns it. We would derive this from ר"י (also), for just as by יעוד the man is returning the משכון (her body) to the אמה and she is מקודשת, similarly here he returns to her the משכון, so she is מקודשת. See 'Thinking it over' # 1.

⁴ there interpreted that the *קידשה במשכון מקודשת* is in a case where he was *מקדש* her by giving her a *משכון* which another *לוה* left by him. ר"נ explained that the reason she is *מקודשת* is because the *מלוה* (the *מקדש*) acquired the *משכון* as ר"י taught that a *מלוה* is *קונה* a *משכון* *שלא בשעת הלוואה*. If we are discussing here a case where he was *מקדש* her by returning to her the *משכון* (*שלא בשעת הלוואה*), the ruling of ר"י should have been cited here as well, as an explanation why the *קידושין* is valid.

⁵ תוספות can mean that he should have brought the same proof in both places; either ר"י בר"י or ר"י ר". Alternately תוספות may mean (at this point) that we require both לימודים for ר"י merely teaches us that a בע"ה is משכון regarding that he has to replace it if it is lost or stolen, but not necessarily that he can be מקדש with a משכון. This we derive from ר"י

And previously (on ב,ה) ר"נ should have cited the ruling of ר"י בר"י. And since the משכון here does not mention ר"י, this proves that the קידושין was not with the גמרא

תוספות offers the correct interpretation:

אלא אפילו במשכון בשעת הלואה איירי⁶ -

Rather we are discussing even if it is a משכון בשעת הלואה -

ואפילו אין מחזיר לה משכון אלא שמוחל לה את המלוה ואף על פי שהמשכון בידו⁷ -

And even if he does not return the משכון to her, but rather he only forgives her the debt, even though the משכון still remains in his hand she is nonetheless מקודשת -

תוספות proves his point that he is not giving her the משכון:

דהא המקדש במלוה שיש עליה משכון קאמר ולא המקדש במשכון -

For stated, 'one who is מקדש with a loan which has collateral', but he did not say, 'one who is מקדש with a משכון'; proving that the קידושין was with the מחילת החוב, not with the returning of the משכון.

תוספות asks:

ואם תאמר כיון דמקדש בהנאת מחילת מלוה⁸ אפילו בלא משכון אמרינן דמקודשת לעיל⁹ -

And if you will say; since we already stated previously that one who is מקדש a woman with the מחילת מלוה, הנאת מחילת מלוה, she is מקודשת even if there was no משכון -

ולמה אנו צריכין ללמוד מרבי יוסי -

So why do we need to derive anything from ר"י בר"י?!

תוספות answers:

ויש לומר דהיכא דאיכא משכון גרוע טפי -

And one can say; that where there is a משכון (as in our case), it is worse than if there is no משכון (the case on ב,ו) -

דסלקא דעתין דלא סמכה דעתה כיון שאינו מחזיר לה משכון -

י"י בר"י (where she is the משכון since גופה קנוי לו). However ר"י בר"י is not sufficient, for how do we know that even a משכון (not only an אמה) is קנוי to the מלוה, this we derive from ר"י.

⁶ In such a case the rule of ר"י does not apply.

⁷ He will obviously be required to return the משכון to her (since he was מוחל the חוב), however the קידושין is accomplished by the מחילת החוב alone, even before he returns the משכון.

⁸ If a woman owes a man money (for a loan which he lent her), and he says to her, 'I forgive you the loan and let us consider the money I lent you as the קידושין money', the rule is that she is not מקודשת. However, if he said to her, 'I will forgive the loan and let us consider the benefit that you have from my forgiving the loan (the הנאת מחילת מלוה) as the קידושין money from me to you', she is מקודשת. In our case too (of המקדש במלוה שיש עליו משכון) we need to assume that he was מקדש her with the הנאת מחילת מלוה (not with the actual מלוה).

⁹ The גמרא there assumes that she is מקודשת, since he gave her something of value (the הנאת מחילת מלוה) by forgiving the loan, and since here he is also being מקדש her with the הנאת מחילת מלוה (see footnote # 8), what difference does it make whether he has a משכון of hers or not; what do we derive from the ruling of ר"י בר"י?!

For it may enter our minds that she is not confident that he forgave her the loan, since he is not returning the משכון,¹⁰ and therefore perhaps she is not מקודשת -
קא משמע לן מילתא דרבי יוסי דמקודשת -

The ruling of ר"י בר"י regarding יעוד teaches us that she is מקודשת, even where there is a משכון involved as in the case of ר"י בר"י, where she is the משכון, and nevertheless she is מקודשת (מיועדת).

ואם תאמר היכי נילף מרבי יוסי ברבי יהודה מיעוד -

But if you will say; how can we derive from the ruling of ר"י בר"י regarding יעוד, that she is מקודשת even if there is a משכון, which is not being returned -

והלא ביעוד מחזיר לה המשכון היינו גופה דהא גופה משכון היא והכא אין מחזיר לה משכון¹¹ -

But is it not so that by יעוד the master is returning the משכון, which is her body, to her, as the גמרא states; 'she herself is the משכון' therefore she is מקודשת, however here (by המקדש במלוה שיש עליו משכון), the man is not returning the משכון to her!

ויש לומר דפשיטא ליה דאין עיקר היעוד בחזרת משכון -

And one can say; that it was obvious to ר"נ that the basic יעוד is not accomplished by the returning of the משכון (the גוף האמה) -

אלא מחמת מחילת שיעבוד המלוה לחוד¹² -

But rather it is accomplished solely by the forgiveness of her loan obligation to continue working.

ונראה לי לדקדק דקסבר רבי יוסי ברבי יהודה דעבד עברי אין גופו קנוי¹³ -

And it appears to me (תוספות) that we can infer that ר"י בר"י maintains that the body of an ע"ע is not acquired by his master -

¹⁰ When there is no משכון on the loan, and the man forgives the loan, the woman has no reason to be suspicious of his intention and she accepts wholeheartedly (סמכא דעתה) that he is מוחל the loan and she is מקדושת through the הנאה which she received. However here where he is still holding the משכון and is not presently returning it when he is מוחל the חוב, she has very good reason to be concerned that he is not being מוחל the חוב (and he will keep the משכון as payment), so since there is no סמיכת דעת perhaps there is no קידושין; we derive from ר"י בר"י that even when there is a משכון, she is מקודשת. See 'Thinking it over' # 2.

¹¹ question may be that perhaps the rule is that if it is a משכון שיש עליו מלוה she is not מקודשת unless he also returns the משכון, otherwise mere מחילה is not sufficient. It is not merely because perhaps she is סמכא דעתה, but rather when there is a משכון, the מחילה alone cannot accomplish קידושין (וצע"ג). See 'Appendix' # 2.

¹² We derive from ר"י בר"י that even where there is a משכון, the קידושין can be accomplished through the חוב alone.

¹³ See the גמרא previously on טז,א where רבא states 'זאת אמרת עבד עברי גופו קנוי לי'.

דאי גופו קנוי מה ענין זה אצל מלוה שיש עליה משכון אין כאן מלוה כלל¹⁴ -

For if ר"י בר"י maintains that ע"ע גופו קנוי, what connection is there from the ruling of ר"י בר"י to the case of שיש עליה משכון, for here by ר"י בר"י there is no loan here at all!

אלא מקדשה בהקנאת גופה לעצמה -

Rather he is מקדש the אמה by granting her body back to her.

ע"ע אין גופו קנוי reconsiders this last inference that

ומיהו יש לומר דעל כרחך¹⁵ לא בהקנאת גופה שהיא קנויה לו מקדשה -

However we can say that perforce the master is not שוקק her, through granting her body, which was acquired by the master, to her -

דאס כן איך תקדש בלא שטר שחרור¹⁶ ובלא הפקר:

For **if** indeed it were **so** (that he is מקדש her through גופה), **how can she be מקודשת without a שטר שחרור and without הפקר**. Therefore we must say that he is not מקדש her through גופה, the הקנאת גופה, but rather through the מלוה which she owes him. There is therefore no inference regarding whether ע"ע גופו קנוי or not.

Summary

It is פשיטא (to ר"נ אמר ר"נ) that (according to ר"י בר"י) the יעוד is accomplished through מחילת החוב (הנאת), but not through גופה – הקנאת המשכון, therefore we can derive that המקדש במלוה שיש עליו משכון she is מקודשת even if he does not return the משכון.

Thinking it over

1. Is the משכון of the אמה (where היא גופה משכון) considered¹⁷ בשעת הלואה or משכון שלא בשעת הלואה?

2. Does יעור require the consent¹⁸ of the אמה?¹⁹

¹⁴ means that he owns her (not that she owes him), like one owns cattle, and because he owns her she works for him. When he is מקדש her, he gives her back what he bought, but there is no loan that is forgiven. Therefore we cannot at all derive the rule of המשכון שיש עליו משכון from the rule of יעוד. The fact that we do proves that אין מוחל גופה קנני and she merely owes him the work for the money he paid; therefore when he is מוחל her it is the equivalent of being חוב אמוחל.

¹⁵ Alternately תוספות may be saying that we do not need ר"נ רבא אמר to prove that ע"ע אי גופו קנוי, we can know it from the ruling of ר"י בר"י directly.

¹⁶ See 'Thinking it over' # 3.

¹⁷ See footnote # 3.

¹⁸ See footnote # 10.

¹⁹ See *בית לחם יהודה אות תפט*.

3. הפקר or גט writes that if he is מקדש her through גופה, she requires גט or הפקר.²⁰ However since she still owes him money (work) and he is מוחל this work in lieu of קידושין, this is seemingly the same as גירעון כסף (when she redeems herself by giving him the money owed) where she goes free without גט or הפקר, why do we not say that when she is מתקדשת on account of the money she owes, it means she is giving him this קידושין כסף?!²¹

Appendix

1. משכנו שלא בשעת הלואה, which negates that we are not discussing a case of מקדש, which he is קונה מדר' יצחק.²² However, previously²³ תוספות explained that one can be מקדש even with a הלואה. The מהרש"ל and מהרש"א tackle this issue in different ways. However, (סוס"י יז) הגרשש"ק resolves the contradiction. Previously where תוספות ruled that she is מקודשת even with a הלואה it is in a case where the מלוה had a משכון from someone else, and he was מקדש the woman with this משכון. Even though the מלוה is not קונה the משכון, nevertheless it represents a שעבוד which the מלוה has against the לוה, and when he gives it to her, he is giving her something (of value) which she never had before. However here we are discussing a case where the משכון he is giving her is her משכון (he lent her money for the משכון [just like by יעוד where the משכון is the woman]), therefore if the מלוה is קונה the משכון (if it is בשעת הלואה), he is giving her something of his, however if he is not קונה the משכון (by a הלואה), she already owns the משכון; he is not giving her anything, therefore she will not be מקודשת.

2. תוספות explains that we require the ruling of ר"י בר"י to teach us that if he is מקדש her with הנאת מחילת מלוה where he has her משכון, she is מקודשת, even though we might have thought there is no דעת (since he is not returning the משכון), nevertheless we derive from ר"י בר"י where there too there is a משכון (since היא גופה), that she is מקודשת.²⁴ Then (immediately) asks²⁵ but how can we derive this from ר"י בר"י, since by ר"י בר"י he is returning the משכון (meaning the

²⁰ See footnote # 16.

²¹ See נחלת משה and רש"ש.

²² See footnote # 2.

²³ ח,ב תוס' ד"ה משכון.

²⁴ See text by footnote # 10.

²⁵ See (text by) footnote # 11.

משכון. Seemingly however in our case he is not returning the משכון (אמה דהיא גופה משכון המקדש במלוה by סמכה דעתה means to ask that we did not explain how there is return יעוד he is returning the משכון. However (if this is the question) answer (בחזרת) דפשיטא ליה וכו' תוספת (המשכון וכו' מחילת שעבוד המלוה לחוד does not seem to answer the question.²⁶ The she is לא סמכה דעתה ר"י בר"י that even when explains that we derive from ר"י בר"י that even when she is merely סמיכות דעת, because in the case of יעוד, there is also no סמיכות דעת, because he is merely חוב, but she is not sure that she is free unless he actually sends her away, the משכון מחזיר he is יעוד question that by תוספות. מקודשת nevertheless she is how do we know that by יעוד the קידושין is on account of the החוב (where there can be an issue of סמיכות דעת), perhaps it is because he is מקנה her the משכון (her גוף), and when he is actually מקנה the משכון there is no issue of סמיכות דעת.²⁷ Now answer is understood that it was פשיטא ליה that the יעוד is because of the הקנאת גופה.²⁸ but not because of מחילה.

²⁶ See the מהרש"א who deals with this issue (but it seems that the עיקר התירוץ חסר מן הספר).

²⁷ When he is *מקדש* her with (merely) *מחילת מלוה* but does not return the *משכון*, she has no *הנאה*, since she is not sure that he is really *מוחל* (and the same is true by *יעוד* if he is *מקדש* her only with *מחילת החוב*); however when he is *מקנה* to her something tangible (whether it is her *גוף* or any other object), even if she did not receive it yet, but since there was a *קנין*, there is no issue of *דעת סמיכות* since he was *מקנה* her something of intrinsic value.

²⁸ The reason that it is פשיטא is because the master intends to bring her closer to him, not to send her away, to be מקנה her גוף away from him.